UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020(MG)

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

May 14, 2012

4:03 PM

B E F O R E:

HON. JAMES M. PECK (FOR HON. MARTIN GLENN)

U.S. BANKRUPTCY JUDGE

Debtors' Motion For Order Under Bankruptcy Rule 1015 Authorizing Joint Administration Of The Debtors' Chapter 11 Cases.

Debtors' Motion For Order Under Bankruptcy Code Sections 105(A), 345, 363, 364, And 503(B)(1) And Bankruptcy Rules 6003 And 6004 Authorizing (I) Continued Use Of Cash Management Services And Practices, (II) Continued Use Of Existing Bank Accounts, Checks, And Business Forms, (III) Implementation Of Modified Cash Management Procedures, (IV) Interim Waiver Of The Investment And Deposit Requirements Of Bankruptcy Code Section 345, (V) Debtors To Honor Specified Outstanding Prepetition Payment Obligations, (VI) Continuation Of Intercompany Transactions, Including Intercompany Transactions With Future Debtors, And Granting Administrative Expense Status To Intercompany Claims, And (VII) Scheduling A Final Hearing On The Relief Requested.

Debtors' Motion For Entry Of Interim And Final Orders Pursuant To Bankruptcy Code Sections 361, 363, And 507(b) And Bankruptcy Rule 4001(b): (I) Authorizing The Use Of Cash Collateral And Related Relief, (II) Granting Adequate Protection And (III) Scheduling A Final Hearing (Citibank Cash Collateral).

Debtors' Motion For Interim And Final Orders Pursuant To Bankruptcy Code Sections 105, 361, 363, And 507(b) And Bankruptcy Rule 4001(b): (I) Authorizing The Use Of Cash Collateral And Related Relief, (II) Granting Adequate Protection And (III) Scheduling A Final Hearing (AFI/Secured Notes Cash Collateral).

Debtors' Motion For Interim And Final Orders Pursuant To 11 U.S.C. Sections 105, 362, 363(b)(1), 363(f), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) And 364(e) And Bankruptcy Rules 4001 And 6004 (I) Authorizing The Debtors To (A) Enter Into And Perform Under Receivables Purchase Agreements And Mortgage Loan Purchase And Contribution Agreements Relating To Initial Receivables And Mortgage Loans And Receivables Pooling Agreements Relating To Additional Receivables, And (B) Obtaining Post-petition Financing On A Secured, Superpriority Basis, (II) Scheduling A Final Hearing Pursuant To Bankruptcy Rules 4001(b) and 4001(c), And (III) Granting Related Relief.

Debtors' Motion For Order Under Bankruptcy Code Sections 105(a) And 107(b) And Bankruptcy Rule 9018 (I) Authorizing The Debtors To File Under Seal Confidential Exhibit To The Servicing Motion And (II) Limiting Notice Thereof.

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P R O C E E D I N G S

THE COURT: Be seated, please. Good afternoon.

MR. NASHELSKY: Good afternoon, Your Honor. Larren Nashelsky from Morrison & Foerster, proposed counsel to the debtors, Residential Capital, LLC and certain subsidiaries which filed petitions for relief this morning.

First I wanted to thank Your Honor for taking the time on an emergency basis to step in for Judge Glenn. We really appreciate it. We need this critical relief, and we thank the Court for its time.

With me today from ResCap is James Whitlinger, the CFO. He was the affiant in the first-day petition. Mr. Whitlinger is right there in the courtroom.

THE COURT: I read your very long submission.

MR. NASHELSKY: It's very detailed.

Also with me, Your Honor, are two of my partners, Todd Goren and Gary Lee, who will be handling some of the first-day motions today and tomorrow.

THE COURT: Okay.

MR. NASHELSKY: I wanted to apologize in advance for having to have a tag-team approach, but I think it's important for everybody to recognize that in the last -- with this filing, there were fifty-one debtors, eighteen first-day motions, two DIP requests requesting borrowings over a billion and a half dollars on a final basis, two use of cash collateral

orders, two asset purchase agreements negotiated and signed with a combined purchase price of almost four billion dollars, and three plan support agreements that I will discuss in more detail tomorrow.

Since Your Honor has granted us an emergency motion (sic), I had a lot more remarks, but I'm going to spare the Court, unless the Court would like more, and just go into the motions. Either way, I can do more, Your Honor, but I know it's an emergency hearing and Your Honor is stepping in.

THE COURT: I don't need to have you say anything other than what I've read in the submissions. But I also recognize that this is a public hearing and it's the beginning of a process that you probably would like to characterize in the best possible way for the audience that's here.

MR. NASHELSKY: That's great, Your Honor. Then I --

THE COURT: So you have that opportunity if you wish to take it.

MR. NASHELSKY: I do, Your Honor. Thank you. But I just wanted to make it clear the we didn't want to indulge (sic) on your time any more than we are.

THE COURT: That's fine. You've already indulged in my whole day in getting ready for this. So a few more minutes --

MR. NASHELSKY: I will apologize many times --

THE COURT: -- a few more minutes won't be a problem.

MR. NASHELSKY: Great. So the debtors are one of the largest mortgage companies in the United States. They're indirectly wholly owned subsidiaries of Ally Financial Inc., which I'll call Ally or AFI. AFI is a bank holding company that is regulated by the Federal Reserve. None of Ally Financial, Ally Bank or other direct Ally Financial subsidiaries are debtors in these cases. The only debtors are Residential Capital, LLC and its subsidiaries.

Ally is almost seventy-four percent owned by the U.S. Department of Treasury as a result of monies it borrowed from Treasury under TARP. Said differently, Your Honor, the debtors are indirectly owned in large part, almost seventy-five percent, by the United States government.

Although not debtors in these proceedings, Ally Financial and Ally Bank have entered into a number of agreements that will be discussed in more detail over the next two days that will support the debtors' operations in these Chapter 11 proceedings and through a sale of assets to buyers.

The debtors have two main lines of business: mortgage loan servicing and mortgage loan origination; and the wind-down of its legacy portfolio. The debtors operate those business through two primary operating subsidiaries: GMAC Mortgage, LLC, and Residential Funding Company, LLC.

With respect to the servicing business, this is the debtors' primary and most valuable asset. It's a business

operation consisting of servicing mortgage loans for investors, including loans originated by the debtors themselves, Ally Bank and other third parties. As of March 31st, 2012, the debtors were servicing over 2.4 million mortgage loans with an aggregate unpaid principal balance of approximately 374 billion dollars.

The debtors are the fifth largest servicer of mortgages in the United States. Only Bank of America, Chase, Wells Fargo and Citi service more mortgages than the debtors. Servicing is critical to our borrowers. It consists of collecting and remitting mortgage loan payments, responding to borrower increase, accounting for principal and interest, holding custodial and escrow funds for payment of property taxes and insurance, counseling or otherwise working with delinquent borrowers, including granting borrower leniency and certain loan modification or repayment plans for borrowers, supervising foreclosure and property dispositions, making advances of required principal and interest and certain property protection costs with respect to delinquent mortgages, and reporting and remitting payments due to investors under securitizations.

As everybody knows, Your Honor, the housing market has suffered dramatically since 2008. One of the responses to that crisis was the implementation of enhanced servicing standards. These were standards that were pushed by the regulators and

adopted by the debtors, which allow for more required refinancings and modifications of borrowers' mortgage loans. The debtors have been a leader in those refinancings and modifications, including under government-sponsored programs such as Home Affordable Modification Program, known as HAMP, and Home Affordable Refinance Program, known as HARP. The debtors intend to remain a leader in mortgage loan modifications during these Chapter 11 cases.

The servicing business is not inexpensive, and servicing advances are the single largest use of the debtors' cash during these cases. That will be the bulk of what we will request in the DIP that Mr. Goren will describe a little later.

The other part of the mortgage loan business is the origination side. The debtors are also one of the leading originators of mortgages; brokering, originating, purchasing, selling and securitizing mortgages. Prior to the petition date, the debtors purchased mortgage loans, and together with mortgage loans they originated in Nevada and Ohio, either sold those loans to Fannie Mae and Freddie Mac, for the GSEs to deposit them into securitizations, or they deposited them into Ginnie Mae guaranteed mortgage loans, which were sponsored by the issuance of MBS or trust certificates.

Post-petition, the debtors intend to continue to originate loans in Nevada and Ohio, selling those loans which will be Fannie Mae- and Freddie Mac-eligible loans to Ally

Bank, its nondebtor affiliate. It will also broker loans to Ally Bank in forty-seven states. For those wanting to do the math, Alaska we do not do any mortgage loans in, the other forty-nine, we do -- sorry, take that back. Hawaii, we do not do any in. The other forty-nine, we are licensed in all forty-nine, but currently, we broker loans solely in forty-seven of them.

I apologize. My team has arrived a little late, Your Honor, but I will continue.

The other part of the debtors' assets is the legacy portfolio. These are principally assets that remain from nonconforming residential loans the debtors did in years past and other residual interests. The legacy portfolios are being wound down and will be sold during these cases.

The primary liabilities of the debtors, Your Honor, are borrowings under a number of credit facilities. And maybe that chart will come up so people can see, but I'll just briefly go through them. Your Honor, there are two facilities with AFI, the nondebtor parent.

Thank you. That might help people see a little bit. Probably can't read it, but --

THE COURT: Nobody can really see that.

MR. NASHELSKY: Nobody can read it. Then I'll describe them. There's an AFI senior secured credit facility that's approximately 748 million dollars outstanding. It

matures today. And it's secured by a number of whole loans, nonagency loans, servicing advances and other assets.

THE COURT: Do you have another copy --

MR. NASHELSKY: I do.

THE COURT: -- of that, that I can just see on the bench?

MR. NASHELSKY: Yes. Can I approach, Your Honor?

THE COURT: Please. Thank you.

MR. NASHELSKY: The second secured facility the debtors have is what they call a line of credit with Ally Financial, as well. This had approximately 380 million dollars outstanding as of the petition date. It also matured today. And it was secured -- or is secured by whole loans, nonagency mortgage service rights and other assets.

The third secured facility the debtors have is a facility with Citibank. It's an MSR facility. MSR are mortgage servicing rights. These are the stream of payments the debtors will receive for servicing pools of mortgages. It has approximately 152 million outstanding, and also matured prior -- just prior to the -- sorry, matured today. That facility is secured by GSE mortgage servicing rights. The GSEs we refer to them colloquially; more accurately, it's Fannie Mae, Freddie Mac or more GSEs, and then Ginnie Mae.

There is also another servicing advance facility with Fannie Mae. It has about forty-eight million outstanding. And

that is secured by Fannie Mae servicing advances.

The two that are in purple in the middle, Your Honor, of your chart, are the two facilities we propose to refinance with the DIP. It is a repo facility with BMMZ. BMMZ is another nondebtor affiliate/subsidiary of Ally Financial. It has approximately 250 million outstanding under the repo facility. And it is made up -- its collateral is made up of whole loans.

The other facility that we propose to replace with the DIP is what we refer to as the GSAP facility. This is a facility that's about 660 million outstanding. And it is secured by nonagency servicing advances. Nonagency servicing advances are not the GSEs but advances we make and we are owed money in repayment of those advances, and those repayments secure that facility. We'll go a little bit more -- Mr. Goren will go into those facilities a bit more with the DIP.

The remaining secured facility is a junior secured note facility, approximately 2.1 billion dollars of principal. It has a second lien on the collateral that the Ally senior secured facility has a first lien on. Those were the whole loans, nonagency servicing advances and other assets.

Finally, there are a number of unsecured -- senior unsecured notes, approximately a billion dollars -- just short of a billion dollars. Those are unsecured, Your Honor. And those are, unlike most of our other obligations, reside solely

at the parent, Residential Capital, LLC, and are not guaranteed by any of the subsidiaries.

The debtors are also parties to a number of lawsuits and contingent liabilities alleging liability from loans the debtors originated and sold over the past number of years. The three big categories of those liabilities are representation and warranty -- rep and warranty liability. And we face substantial and continuing rep and warranty requests due to alleged breaches of rep and warranty or early payment defaults. Between 2008 and 2012 we repurchased mortgage loans or otherwise made payments with respect to those claims of 2.8 billion dollars.

There are also monoline insurance -- I'm sorry -- monoline insurer representation and warranty litigations. There are about fifteen cases that the debtors have with monoline insurance companies. And in those cases, the monolines are alleging that the debtors breached their rep and warranties.

Finally, the debtors are defendants in approximately nineteen securities case. And those cases allege that the debtors made misrepresentations or omissions in registration statements and prospectus.

Why do we find ourselves here, Your Honor? The circumstances leading to this filing, there are a number of reasons, but many of which can be traced back to the continuing

adverse economic climate, particularly in the residential mortgage industry. Starting in 2007, we saw record declines in home values and a continuing glut of homes available for sale and those in foreclosure. Throughout the past five years, homeowners have had difficulty paying their mortgages, refinancing their mortgages, this despite record low interest rates. It is also very difficult to sell homes or buy homes in this environment.

As both loan delinquencies and regulation costs increased, the cost of servicing mortgage loans also increased. Although the debtors have continued to honor their servicing obligations, it's become financially challenging to do so, especially while having limited access to the capital markets. These liquidity problems existed despite Ally Financial having made capital contributions of approximately 10.3 billion dollars to ResCap since 2007.

As I just noted, Your Honor, there's been a significant changing regulatory landscape. And I think we'll talk about this a little bit more tomorrow with some of the motions, but as a result of this crisis, there were numerous government agencies investigating mortgage service companies. There are three meaningful settlements or orders that come out of those investigations.

On April 13th, 2011, as a result of an examination by the Federal Reserve and the FDIC, ResCap and GMAC Mortgage and

certain nondebtor affiliates entered into a consent order. The consent order requires ResCap and GMAC Mortgage to make improvements to various aspects of their residential mortgage loan servicing business and to undertake a risk assessment of their mortgage servicing operations. Substantially all the requirements under the consent order have now been implemented.

The consent order also requires the debtors to conduct a review of past residential mortgage foreclosure actions and remediate any financial harm to borrowers that result from errors or misrepresentations that the debtors uncovered in those reviews. The file review is underway and will continue post-petition.

On February 9th, 2012, AFI, ResCap and certain other debtors, along with the four largest servicers of mortgage loans in the United States, reached an agreement in principle with the federal government, forty-nine State Attorneys General, and forty-eight state banking departments, with respect to a DOJ/AG investigation. The DOJ/AG settlement resolves most potential claims of the government parties arising out of origination and servicing matters and foreclosure matters.

Pursuant to the DOJ/AG settlement, in February 2012, the debtors paid approximately 110 million dollars to a trustee who is distribute those settlement funds to federal and state governments. In addition, the debtors committed to provide a

minimum of 200 million additional dollars towards borrower relief which would come in the form of loan modifications, principal reductions, rate modifications and refinancings.

The DOJ/AG settlement provides incentives for borrower relief provided by the debtor within the first twelve months. And all borrower relief must be satisfied by 2015. The debtors are well underway with satisfying those requirements. Compliance with the obligations of the DOJ/AG settlement will be subject to oversight by an independent monitor who will have authority to impose additional penalties and fines for noncompliance.

Lastly, on February 9th, 2012, AFI and ResCap agreed with the Federal Reserve Board on a civil money penalty of 207 million dollars related to the same activities that were the subject of the DOJ/AG settlement. This 207 million dollar amount will be reduced, dollar for dollar, in connection with the satisfaction of the federal portion of the DOJ/AG settlement. Additional future penalties related to the civil money penalty may be imposed if we do not satisfy those requirements.

With that regulatory backdrop, much of the first-day relief being requested today and tomorrow is to permit the debtors to continue to operate their businesses within this regulatory landscape and to sell their assets in an orderly fashion for almost four billion dollars under their stalking-

horse bids, and to benefit creditors. To do that, it's critical that the debtors have the ability to comply with the various obligations under these regulatory provisions. Not surprisingly, no buyer wants to buy our assets if we haven't continued to comply with those provisions; and we intend to.

It's mission critical, Your Honor, that in complying with all of the additional requirements I just described, the debtors maintain their entire workforce. These regulations require significantly more man and woman hours to satisfy enhanced servicing standards. The servicing business is very competitive right now, and the debtors cannot afford to lose any of their employees if they have any hope of continuing to fulfill these regulatory obligations.

We are also -- excuse me, Your Honor. We were part of the problem, Your Honor. We are trying very hard to be part of the solution. Complying with these regulatory obligations is a critical part of that solution, a solution that will be continued by the buyer after the sale.

So that there were no surprises and that we had support from our regulators prior to filing, the debtors had numerous discussions with a variety of regulators prior to the filing, including the monitor that I described earlier from the DOJ/AG settlement and the Office of Mortgage Settlement Oversight, the Consumer Financial Protection Bureau, the Department of Justice and Executive Office of the United States

Trustees, the Conference of State Bank Supervisors, AG Monitoring Executive Committee, the New York State Department of Financial Services, and the Oklahoma Attorney General's Office and Banking Department. There are many more calls set up starting today through the end of the week and beyond. The debtors understand the importance of these regulatory issues, and they will continue to comply.

The debtors would like to use Chapter 11, and specifically a Chapter 11 plan here, to facilitate an orderly sale of their most valuable assets, the origination and servicing platform I described earlier, and their legacy portfolio. They would then wind down and sell any remaining assets and resolve their legacy liabilities. The debtors believe that a rapid sale process during this calendar year will reduce the risk of disruption and dissipation of value with originating and servicing mortgage loans in a bankruptcy.

By doing this, Your Honor, the debtors hope to provide the best possible outcome for the more than 2.4 million customers whose loans they service and for the many investors in securitizations that own loans serviced by the debtors. They hope to avoid disrupting the fragile housing market recovery and preserve their employees' jobs.

The key pieces of this restructuring effort are the DIP financing, which we will discuss in a moment; the asset sales, which include a sale of the platform and assets to

Nationstar; and a sale of the legacy portfolio to Ally Financial. The Nationstar sale is for a purchase price of approximately 2.4 billion dollars -- sorry, almost 2.4 billion dollars; and the Ally sale is for a purchase price of approximately 1.6 billion. Together the sales are generating almost 4 billion dollars of value for the estates.

The third piece of this restructuring effort includes settlements we've reached just before bankruptcy with Ally Financial; with the holders of approximately 781 million dollars of our junior secured bonds, which is approximately thirty-seven percent of those bond issuance; and with a group of institutional investors in residential mortgage-backed securities issued by ResCap's affiliates. And those investors hold more than twenty-five percent of at least one class in 290 deals out of 392 total deals we did, with an original principal balance of 164 billion that they hold -- sorry, of those deals, compared to a total original principal balance of 392 deals we did of 221.

So significant holdings in approximately seventy-five percent, whether you go by dollar amount or number of deals, are supporting the plan that the debtors are moving forward with.

With respect to the asset sales, Your Honor; at the beginning of the year, the debtors' investment banker, Centerview Partners, launched a targeted marketing process for

the debtors' assets. Five potential bidders were contacted, and we negotiated NDAs with each of them. These were bidders that had previously shown interest in the debtors' assets and had the economic wherewithal to complete transactions of this size.

The buyers were encouraged to be flexible with their proposals, and that the debtors would consider bids for any and all asset combinations, including bids on individual assets. The debtors received three preliminary bids of interest, including one from Nationstar, a portfolio company of Fortress. Nationstar and one other bidder indicated their interest in participating as a stalking-horse bidder for a substantial portion of the debtors' assets and operations. The third bidder expressed an interest in buying a limited group of financial assets.

The debtors elected to proceed with the two bidders. And after further bids were received, Nationstar's offer was subsequently the highest and the best offer for the debtors' business. Nationstar is paying almost 2.4 billion for the mortgage loan origination and servicing platform and related assets.

As to these sales, both sales are subject to higher and better offers as part of an auction process that hopefully will be established in the coming weeks. We anticipate the process will give potential buyers approximately three months

to prepare bids to bid on these assets. We would hope to have an auction in mid-September. And to that end, we have filed a motion seeking a hearing in mid-June for approval of sale procedures.

It should be noted, Your Honor, that from the start of the sales process, the debtors and their advisors have spent significant times with a variety of government entities, including Fannie Mae, Freddie Mac, Ginnie Mae and FHFA. In order to garner the support of such organizations, the debtors engaged in constant dialog, consisting of multiple weekly update calls, frequent in-person meetings, and in-person management presentations, where the debtors were, and they were also joined by Nationstar.

Part of what these government entities would like to know, Your Honor, is to be comfortable that Nationstar, as the acquirer of such a large portfolio, can continue to service them at the levels the debtors have. Obtaining government support is viewed as paramount by the debtors in consummating a value-maximizing sale of assets and operations. Although we don't have complete sign-off from those entities today on all the terms of the sale, they have generally indicated their support for the process and what the debtors are seeking to do in selling their assets to Nationstar.

Your Honor, the final piece of the debtors' plan that I want to briefly summarize were the three plan support

agreements I noted earlier. Back in the fall, it became apparent that the debtors' best chance of restructuring involved significant financial support from its parent, Ally Financial. It similarly became apparent that further support in connection with a comprehensive restructuring would require the debtors to provide releases to Ally Financial. Nothing comes for free, Your Honor.

And to determine whether such a settlement would be appropriate, and whether releases would be appropriate under the circumstances, the debtors undertook an investigation of potential claims against Ally. To make the process completely independent, the debtors appointed two new independent members to the ResCap board who had no prior involvement with either ResCap or Ally, and created a subcommittee of those two independent board members with sole responsibility for the investigation.

THE COURT: When did this occur?

MR. NASHELSKY: The investigation started in end of November, early December, Your Honor, and continued through February, and then negotiations, probably, for the last two months, culminating on a settlement in the last -- actually signed up this morning.

THE COURT: Okay. I don't need to know the details of what you just described. I'm sure it will be the subject of some close analysis during the case.

MR. NASHELSKY: Yes. I am sure, Your Honor.

Morrison & Foerster worked closely with counsel for the independent directors, Morrison Cohen, in undertaking this investigation. A settlement was ultimately reached which was unanimously approved by the special committee of the ResCap board. The settlement includes the following key contributions by Ally to ResCap.

THE COURT: When you say "unanimously approved by the special committee", that means the two independent directors?

MR. NASHELSKY: The two members. And then endorsed by the full board.

Ally will pay the debtors 750 million dollars in cash. Ally will act as a stalking-horse bidder on the legacy loan portfolio I described earlier, for a price that is 200 million dollars higher than Nationstar was willing to pay for those same assets; hence we have the bifurcated sale process now.

Ally will also support ResCap's continued origination of loans in bankruptcy. As far as we can tell, Your Honor, originating loans while in bankruptcy has never been done before. And with Ally's support, we hope to complete that.

Continuing origination is critical. Not only is Nationstar requiring the debtors to continue to originate during the cases, but origination is estimated to yield approximately a hundred million dollars in net profit to the debtors between today and the closing of the sale to

Nationstar.

As will be discussed in more detail below, Ally is also providing a DIP loan to allow the debtors to continue to make required Ginnie Mae buybacks. Finally, Ally is providing essential service to the debtors during the Chapter 11 cases to allow the debtors to operate as a going concern through the sale to Nationstar and any subsequent wind down.

Based on those contributions that the debtors valued well in excess of a billion dollars, and which also allowed the debtors to propose a plan that implements the sales to Nationstar and Ally, the independent directors concluded that the truly unusual circumstances justified a settlement that includes third-party releases.

I want to be clear, none of the relief being sought today or tomorrow limits in any way third parties' rights with respect to challenging the settlement, third-party releases, or anything else. Those issues are for another day. We just wanted to give the Court and the parties an overview of what the settlement entails.

THE COURT: I have one question about process. And it's probably premature, but I'm going to ask it anyway. To the extent that there is a competitive process that is being undertaken here, starting with June sale procedures to be approved and a September auction, if one were to assume hypothetically a robust competition for the assets that are the

subject of Ally's stalking-horse bid of 1.6 billion dollars, how does the company independently assess that, given what appears to be a conflict within the corporate structure, since Ally is benefitted by this transaction by reason of the releases? It almost seems to be inviting a Chapter 11 trustee or some independent fiduciary to be involved in assessing this.

And my question is, to what extent has any consideration been given pre-filing to how that aspect of the case will be managed?

MR. NASHELSKY: We've given significant thought, Your Honor. We believe that with the investigation we've done, and with the a creditors' committee who will be shortly appointed, we believe we can have a robust process that looks at the investigation, looks at the materials, looks at the facts, and determines whether the board's judgment was reasonable, given the circumstances.

On the bid you just noted, Ally Financial is completely exposed to being overbid on that bid. They do not -- they're not locking up those assets. I attributed a 200 million dollar value between the Fortress bid and the Ally bid. That's the value today based on having a 200 million dollar higher bid than we have. That value may not be there come the end of the case if they get overbid, and we'd have to have a different discussion about what that value would be.

THE COURT: But the decider will be the debtor-in-

possession with the advice and consent and oversight of the creditors' committee, assuming one is appointed here.

MR. NASHELSKY: And the ability of creditors to object in a process before the Court.

THE COURT: Okay. I'm just raising what to me seems to be a potential issue down the road. But we don't need to address it today.

MR. NASHELSKY: Fair enough, Your Honor. We recognize it is. But I think it's important to note that in addition to Ally, the debtors began discussions with advisors representing an ad hoc group of the junior secured bonds. Those are the bondholders that hold the second lien position on the collateral that the AFI senior secured credit facility has a first lien. That ad hoc group included holders of approximately forty percent of the junior secured bonds and is represented by White & Case and Houlihan Lokey.

After execution of an NDA, the debtors gave those advisors access to a data room containing a significant amount of information about the debtors, their capital structure and operations. After a few months of diligence and meetings with the debtors and their advisors, we began to discuss a potential settlement.

The settlement discussions focused on the junior secured bonds' support of a plan which includes the asset sales I described earlier and an intercreditor settlement of

potential claims between the junior secured bonds and Ally, with respect to the collateral they share and the positions on that collateral.

After months of negotiations among the advisors, the committee -- the ad hoc committee -- sorry, the advisors to the ad hoc committee, Ally and the debtors, the junior secured bondholder advisors believed the settlement was at a point where they needed to have holders of their bonds become restricted to make the ultimate determination about a settlement. After becoming restricted, the parties finalized a settlement that is embodied in the plan support agreement among the debtors, Ally and those holders who are signatories thereto.

The primary terms of the plan support agreement include the junior secured bonds' support of the plan, the first day motions, the DIP facilities and the use of cash collateral; the junior secured bonds waive any potential right to post-petition interest till the end of the year; and they waive the right to pursue any claim for an equitable lien they may have on the Ally LOC assets -- that's the second facility on the chart -- if the plan is confirmed by 12/31.

Ally has agreed to modify its intercreditor agreement with the junior secured bonds, such that Ally only gets the first 400 million of those bonds instead of the 748 they're currently listed as being entitled to. The next billion they

share -- sorry, JSBs get the next billion. And then they share eighty-one percent to the junior secured bonds and nineteen percent to Ally after that.

Another benefit to the estate is through this intercreditor settlement agreement, the debtors are only paying interest on 400 million of an Ally revolver as opposed to the full 750, if we can confirm a plan that approves that settlement.

Finally, Your Honor, we reached a settlement with our parent; we reached a settlement with bondholders; but we also thought it very important to reach a settlement with contingent claimants that held many of the claims I described earlier. And what the debtors have achieved is a settlement in support with a very large group of contingent creditors who have claims arising from the debtors' sale of mortgage loans.

Those creditors are represented by Kathy Patrick of Gibbs & Bruns. Ms. Patrick recently represented similar clients with similar claims against Bank of America. Ms. Patrick's clients are some of the largest investors and investment management -- excuse me -- investors and investment managers in the world. Specifically here, they are institutional investors in residential mortgage-backed securities issued by ResCap's affiliates. At present, those institutional investors hold more than twenty-five percent of at least one class in 290 securitizations; and they have agreed

to support the debtors' restructuring.

I won't go through much detail on the settlement today, Your Honor. It's obviously not up to today and will be the subject of a future hearing. But the essence of the settlement is that Ms. Patrick's clients have agreed to recommend that the trustees for RMBS cap the trust claims against the debtors at 8.7 billion for all claims held by the trust that arise from PSAs and the other related trust documents. As you can imagine, when dealing with complex securitizations, trusts, and certificates, the settlement is much more complicated than the simplified version I just gave you.

Part and parcel with the settlement is a plan support agreement under which Ms. Patrick's clients will support the debtors' efforts in various aspects of the restructuring, including prosecution of the first- and second-day motions, and approval of a disclosure statement and plan that materially conform to the plan term sheet. They will also direct the trustees of relevant trusts to accept the settlement agreement and support the same aspects of the bankruptcy case as the claimants themselves.

To come full circle, Your Honor, the debtors believe that in one of the most complicated bankruptcies in recent memory, including the continuation of the operations of a financial services company during a bankruptcy, the elements of

a successful Chapter 11 case are taking shape. The debtors hope to move quickly through Chapter 11 for the sake of their business, their creditors, their employees, their customer, and the fragile U.S. housing recovery.

Your Honor, thank you for your indulgence on letting me give some background to the Court and to the parties today. Unless the Court has any questions, I was going to turn the podium over to Mr. Marinuzzi and Mr. Goren to go through today's first-day motions.

THE COURT: I do have one question that relates to the timeline for getting all this done. I noticed that the maturity date for purposes of the DIP financing, which we're going to be getting into, is eighteen months, but the plan that you outline calls for, perhaps optimistically, an exit before the end of the year. Is there any consequence to the debtor in respect of its financing, its plan support arrangements, its post-petition operations or otherwise, if the timeline associated with the sale process and completing the plan process associated therewith, should be prolonged?

MR. NASHELSKY: Currently, all those agreements require milestones and deadlines. The buyer is requiring them. The DIP lender is requiring them. And the counterparties to our plan support agreements are requiring them. So the short answer is, Judge, yes there is significant consequence if we can't achieve a sale -- well, if we can't achieve plan

confirmation by the end of October, or a sale of the assets -- sorry, a sale order for the assets by the middle of November; or if we achieve confirmation, if we can't go effective before the middle of December. We'd have to close those sales.

So what we've done is, we've entered into these plan support agreements; we're proposing a plan; and we believe that's where the highest and best value is. But we have not done it in a way that this can't be closed outside of a plan process. These asset purchase agreements are designed that if a plan isn't confirmed by a certain date or if it doesn't go effective by a certain date, then separate sale orders will be entered and those assets will be sold.

So while we are optimistic that we can get a plan that has a lot of support, we've not put all our eggs in that basket, Your Honor. There are sales that will be done either way.

THE COURT: And will you be endeavoring to garner support from others who are part of the same constituency that signed plan support agreements, but who are not yet on board?

MR. NASHELSKY: Absolutely, Your Honor. We are -- we have been in active discussions, and quite frankly, with signature pages coming in, some of the numbers I gave you for both Ms. Patrick's groups and the junior secured bondholders are probably increased either since I left my office or since this hearing started. But we have also reached out and had

pre-petition discussions with the monolines, other contingent holders similar to Ms. Patrick's clients, and other significant holders of the junior secured bonds and the senior unsecured bonds that I described.

So we believe we've been talking to just about everybody, and we absolutely want to continue to talk to everybody, because we understand that this is -- there's a lot to be done here. And if we can't get everybody comfortable that this is the best deal, then we're going to have a problem, and we may end up ending up just selling the assets, losing a bunch of the value we're getting out of the variety of these settlements, and having to then have a prolonged plan and claim dispute thereafter.

But we're optimistic that we can push forward and see if we can get increased support for our plan.

THE COURT: All right. Thank you.

MR. NASHELSKY: Thank you, Your Honor. With that, I'd turn it over to Mr. Marinuzzi to briefly go through -- he's going to do joint admin, and then Mr. Goren is going to handle the financing motions.

MR. MARINUZZI: Good afternoon, Your Honor. For the record, Lorenzo Marinuzzi, Morrison & Foerster. Your Honor, when we determined which motions we wanted to proceed with today, with the Court's indulgence, versus tomorrow, we wanted to minimize the number of motions that the Court had to hear

tonight. And of the administrative motions that were originally scheduled for the first-day hearing, we limited it to the joint administration motion.

It's a standard, pro forma joint administration motion. We'd like to have the lead caption be "Residential Capital, LLC, 12-12020". Unless Your Honor has any questions, it's --

THE COURT: I have no questions. But I'll check to see if the U.S. Trustee has any comments.

MS. DAVIS: Good afternoon, Your Honor. Tracy Hope Davis, United States Trustee. Our office spent a considerable amount of time speaking with the parties about the draft first-day orders. But as time would have it, we did not get a chance to really fully digest the black-lined copies.

We have some comments that I would like my colleague Mr. Masumoto to fully articulate to Your Honor, perhaps order by order or motion by motion; but I wanted to just let the Court know and let the parties know that the U.S. Trustee is doing its best to appoint a creditors' committee as soon as possible. I have an organizational meeting scheduled for March (sic) 16th at --

THE COURT: It must be May.

MS. DAVIS: Oh, pardon me. It's the M's. May 16th at 10:30 at the Hilton New York. And that'll be posted on our web site. And the hope is that we'll have a committee appointed as

soon as possible.

I'll defer to Mr. Masumoto as to the remainder of our issues. Thank you.

THE COURT: Okay. Thank you. Mr. Masumoto, any comments with regard to joint administration?

MR. MASUMOTO: Your Honor, we had discussions with counsel, and I believe they agreed to certain modifications. One thing that was not contained in the original version of the order provided for separate disbursements by the individual debtors. I believe the order did not specifically address whether or not the debtor would be seeking to file consolidated statements; but I'll leave that decision up to the debtor.

So we did ask that at least we have a chance to see the order before it's submitted to the Court.

MR. MARINUZZI: Your Honor, we don't have any issues. We're going to submit consolidated monthly operating reports, but we'll break down disbursements by debtor entity. And we'll add that to the order for clarification.

THE COURT: Okay. Just for housekeeping purposes, if that order can be put in shape to enter as we speak, literally --

MR. MARINUZZI: It can. We'll do that.

THE COURT: -- one of Judge Glenn's law clerks could take it down to his courtroom deputy and we could have the order entered, making it easier to enter subsequent orders both

today and tomorrow.

MR. MARINUZZI: Will do, Your Honor. Thank you.

THE COURT: So if someone has access to a computer, I encourage that the changes be made now.

MR. MARINUZZI: We'll do that. Thank you, Your Honor.

THE COURT: So this is the tag team that I was warned about.

MR. GOREN: Yes, Your Honor. Thank you.

MR. NASHELSKY: This was the tag team you were warned about.

MR. GOREN: I will be handling everything else, though, today, so no more tag teaming.

THE COURT: Okay.

MR. NASHELSKY: Your Honor, the tag team seemed a lot better when there were a lot more motions and it wasn't one motion at a time. But we apologize.

THE COURT: No problem.

MR. GOREN: Thank you, Your Honor. Todd Goren, Morrison & Foerster, proposed counsel for Residential Capital, LLC and its subsidiaries. I'll be presenting four motions today, all relating to the debtors' finances and all critical to the debtors' ability to operate in these Chapter 11 cases.

In support of this relief, we rely on the affidavit of James Whitlinger, chief financial officer of the debtors, and Marc Puntus of Centerview Partners, the company's investment

banker. We would ask that both declarations be accepted into evidence for purposes of today's hearing. Both Mr. Whitlinger and Mr. Puntus are in court and available to the extent anyone has any questions.

THE COURT: Does anyone object to the request that I receive in evidence the affidavit of Mr. Whitlinger and the declaration of Mr. Puntus?

There's no objection. They're admitted.

(Affidavit of Mr. Whitlinger was hereby received into evidence as Debtors' Exhibit, as of this date.)

(Declaration of Mr. Puntus was hereby received into evidence as Debtors' Exhibit, as of this date.)

MR. GOREN: Thank you, Your Honor.

The four motions I'll be discussing today are the debtors' motion to use a modified cash management system; their motion to seek a 1.45 billion dollar debtor-in-possession financing facility, syndicated by Barclays as administrative agent and collateral agent; and authority to enter into another debtor-in-possession financing facility of potentially up to 220 million dollars with Ally Financial; and to use the cash collateral of Ally Financial and the junior secured bonds. And finally, we'll be seeking authority to use the cash collateral of Citibank in connection with the debtors' MSR mortgage servicing rights facility.

I'll start with cash management, if that's acceptable

to Your Honor?

THE COURT: That's fine.

MR. GOREN: Okay. The debtors' primary business lines are servicing and originating mortgage loans. As servicer, the debtors are responsible for managing and disbursing significant sums of money on a regular basis, and often are required to make significant advances from their accounts to cover shortfalls in payments made by borrowers. These advances are the debtors' single biggest cash use, and they amount to hundreds of millions of dollars a month.

These advances represent shortfalls in principal payments on loans or tax payments to authorities. So to the extent a borrower fails to make the payments, the debtor is obligated under its various servicing agreements, typically to make those payments on the borrower's behalf, subject to reimbursement down the road.

The debtors require immediate access to funds in order to afford -- because they cannot afford any delay in making the distributions required of them as servicer without severely jeopardizing their operations and thus the value to be realized from the estate from the planned sale to Nationstar.

As I'll get into a little bit later, the debtors currently hold over 220 million dollars in an unencumbered account. And I consider it a minor miracle that it's managed to stay unencumbered through the debtors' distress over the

years and will remain unencumbered through these bankruptcy cases. But unfortunately, that 250 million dollars will not get us very far during this case. And so we need access to all of the cash in our system as quickly as possible.

If the debtors do not obtain permission from this Court to use their cash management system and access these funds, checks will begin to bounce by noon tomorrow, which would be most uncharacteristic of one of the top servicers in the country and would severely jeopardize the debtors' reputation in the industry.

The debtors' primary -- the primary debtor that does servicing is GMAC Mortgage, LLC, which will sometimes be referred to as GMAC-M or GMAC Mortgage. And if they were to bounce checks, it would not only cause reputational damage, it would cause severe economic harm to the investors in the various securitization trusts that the debtors manage.

The debtors are not seeking to satisfy any pre-petition debts or make any extraordinary payments by this motion. Rather, the debtors are simply asking the Court to allow them to continue using their cash management system, as modified to account for the various changes that the debtors have implemented during this case, which I'll get into now.

As my colleague Mr. Nashelsky went through, the debtors have a very complex capital structure. And there are -- substantially all their assets are liened up except for

an unencumbered cash count that I mentioned and advances and mortgage servicing rights with respect to Ginnie Mae. But the rest of their assets are all liened up, and -- but by various different facilities in different amounts.

As we started to get closer to the bankruptcy case, it became clear that it would be difficult to ensure the adequate protection of our various secured lenders, and in fact, our DIP lender required, because they weren't taking a lien on all of our assets, that the funds that they were advancing stayed in a closed loop. So what we've done for purposes of this case is modify our cash management system to create various islands of the different buckets of collateral within our estate. We've created concentration accounts at the top of each island, so that money will flow through, go to pay the expenses of each island, along with an allocated portion of administrative expenses, and then sit in the concentration account to be used for that purpose.

The relief requested in this motion goes hand-in-hand with our next three motions, our financing and cash collateral motions, as it will help us ensure that we adequately protect the interests of our secured creditors.

THE COURT: Let me just ask you a very simplistic question. Are you proposing that these motions be heard seriatim or are you proposing that they be heard and considered as one cluster of related motions?

MR. GOREN: They're separate motions, but they really are dependent on each other. Both the AFI DIP/cash collateral motion and the Barclays DIP motion require entry of the cash collateral order. So the cash collateral order -- sorry, cash management order is a predicate, I think to our ability to get the next three motions. The next three are certainly interrelated. We need access to all of our cash collateral right away, and we need access to -- as I'll get into -- a significant amount of DIP financing right away. But I don't know that they're intertwined in the same way.

THE COURT: Well, Mr. Whitlinger's affidavit suggested that they were a package. All I'm really asking is whether you're seeking what amounts to an order first on cash management with whatever comments are to be made on that, and then sequentially going into each of the others, or are we, in effect, doing this all at once? It's a very simple --

MR. GOREN: Okay.

THE COURT: -- question of how we're proceeding.

MR. GOREN: I would say sequentially.

THE COURT: Okay.

MR. GOREN: I would like to get cash management done first, because that's, right now, the most important thing to make sure money can flow as necessary.

THE COURT: All right. At least speaking for myself, I consider the modification of cash management procedures as

part of a cash management motion to be an unusual feature of this motion. In the ordinary course of large Chapter 11 cases that I'm familiar with, debtors' counsel shows up and says it would just be too hard to change existing cash management procedures, and so we want them to be validated on the first day.

You're doing something very different. You're seeking to change it on the first day. And even Mr. Nashelsky is nodding in agreement that what I'm saying is something that you've probably thought about. So it seems to me that for first-day purposes, you may need to have a somewhat heightened standard for telling me why we should be changing existing cash management other than the lenders insist on it.

MR. GOREN: It wasn't merely that the lenders insisted on it, Your Honor. There are -- as we began to plan for Chapter 11, we realized that there are significant expenses that flow through the estate. And if we didn't -- and the debtors, prior to the petition date, ran through -- ran as an integrated company. And if they didn't develop an ability to track and manage how the various cash spend applied to each facility, it would be difficult, if not impossible, to assure that we were adequately protecting the interests of our lenders.

So we embarked on that process before we had committed financing from anyone, before we had a single conversation with

any of our lenders about what the cash management system might be like in this case; because it was our independent view that it would be difficult for us to ensure the adequate protection of our lenders without implementing this procedure.

And the procedure really is solely intended to ensure the protection of our various lenders and creditors to make -- and that includes the estate as a whole, because we needed to make sure that to the extent unencumbered cash was used, and since we have a significant amount of it, that it benefitted the estate and didn't go to the benefit of various lenders. So the cash management system -- the modified cash management system that we're proposing, we believe is beneficial to all the estate's creditors.

THE COURT: I'm going to ask Mr. Masumoto if he has any issues with regard to what's being proposed; and then I'm going to ask if anybody else has any issues.

MR. MASUMOTO: Your Honor we have some issues with respect to the overall procedure. One component of the request in the order is that they have ninety days to come into compliance. As Your Honor knows, typically the request is thirty days. Ninety days in this case, where things are moving so rapidly, from our standpoint, is a problem. I believe -- I'm not sure if it was mentioned -- I believe it was mentioned in the 1007 of Mr. Whitlinger, but there are over 3,500 accounts. And as the debtor, I think has articulated, they

open and close these accounts perhaps on a daily basis. From the standpoint of the materials that were submitted, although they had a list, I believe it may have included the 3,500 accounts, there was no indications of the amounts that were in the account.

In addition, as Your Honor may have gathered by reading the material, certain funds don't even belong to the debtor. They serve as a conduit for certain payments. So it's not clear to what extent the funds that the debtor is handling or maintaining control over are even part of the estate.

So there are a number of issues that have arisen. Leaving the issues as to whether or not they're going to request a waiver of the 345 requirements for ninety days, from our standpoint is much too long and certainly not the acceptable practice. We would request that the Court enter an order that conforms to a typical period, which is thirty days, which will certainly give enough time for the creditors, also, to get on board to analyze the system and to determine whether or not any variation or waivers of 345 will be granted.

The investment practice also is rather unusual, because they -- frankly, Your Honor, I had some difficulty understanding it. But rather than actual investment practices, they get certain credits against their fees, because of the nature of the way in which they maintain the accounts. And all of these -- whether or not that complies with 345 or not, are

discussions that we have to have with the debtor. But as mentioned, we also, from a technical standpoint, have to evaluate whether or not -- what portions of the over 3,500 accounts are either FDIC-protected or in nonauthorized depositories that are exposed.

THE COURT: So are you objecting principally to the period of time for bringing these accounts into compliance with 345?

MR. MASUMOTO: At this point, yes. Your Honor, as to the separate -- the newly developed system of creating separate islands to protect various collateral, from our standpoint, at the first day, we don't have any objection to that particular practice.

THE COURT: Okay. So you're not objecting to the part of this which is actually the most exceptional?

MR. MASUMOTO: Which is -- yes, which is the new part of it. But we are concerned about the mechanics of the individual accounts that will be part of the system.

THE COURT: Okay. Fine. For purposes of the first day of the case, it's obvious that authority has to be given to allow the company to continue to operate in accordance with the cash management procedures that have been in place to be modified in a manner that satisfies the requirements of the debtor-in-possession financing, to be considered in a moment.

I'm going to approve the facility -- the use of cash

on an interim basis. Some people are getting up -- apparently I'm doing this too soon. Or they want to reserve rights or something like that.

MR. GOREN: We do have one objection to this motion, actually, Your Honor --

THE COURT: Okay. So it must be --

MR. GOREN: -- which I saw.

THE COURT: -- it must be that somebody wants to reserve rights. Let's do that.

MR. MOAK: Your Honor, Paul Moak, M-O-A-K, with McKool Smith on behalf of Freddie Mac. As Mr. Nashelsky indicated earlier, the debtors service loans that are owned by Freddie Mac, and that includes receiving from borrowers monthly principal, interest, taxes, and insurance payments, and then remitting the principal and interest to Freddie Mac, to whom it's owed.

As U.S. Trustee's counsel said earlier, in essence, the debtors serve a conduit function with regard to that. We have been assured by the debtors, and in fact there's a motion to be heard tomorrow, that they will continue, post-petition to operate their servicing platform in the same manner they did pre-petition. It's unclear to us whether the modifications they've requested in this motion would impact the way that Freddie Mac's monies are collected and then distributed. We don't think that's the intention.

But for example, there was discussion with regard to collection accounts, concentration accounts, that I think you heard Mr. Goren speak of, and again, we think that that's money that is not ours, but it's not entirely clear. And so to the extent that any of the collections of principal and interest or taxes or insurance related to Freddie Mac loans are being impacted by the modification of the cash collateral (sic) system, we object to that, or would at least like some additional clarity with regard to that.

Also, Your Honor, we just had one particular objection with regard to paragraph 7 of the order. It says that "the debtors are authorized to continue to deduct amounts from the custodial accounts," which I again understand to be accounts in which principal and interest are maintained on behalf of Freddie Mac and others, "for the repayment of the Advances," capital A, Advances. Well, first of all, I don't think capital A "Advances" is defined in the motion, so we're not certain exactly what that means. But --

THE COURT: It's defined in the affidavit supporting the motion submitted by Mr. Whitlinger.

MR. MOAK: Okay. To the extent that that includes corporate advances, Your Honor, we oppose that, because it would be inconsistent with the Freddie Mac guide and the purchase documents. So we think that paragraph 7 should be revised to reflect that the debtors are authorized, to the

extent permitted by the Freddie Mac purchase documents, the governing documents, the guide, to do so, that they continue to operate as they have pre-petition.

Your Honor, I think that's the extent of my comments. If my understanding is inconsistent with the debtors' intention, as I mentioned, we'd object to the modification of the cash management system.

THE COURT: Okay. Why don't we take these one at a time. Can you provide some assurances right now to Freddie Mac? I assume that you have no intention of doing anything that's at odds with the requirements of their governing documents.

MR. GOREN: That is exactly right, Your Honor. While we were -- while Freddie Mac's counsel was speaking, Mr. Moak, I conferred with Mr. Whitlinger and the treasurer, Joe Rollin (ph.), and they both confirmed to me that Freddie Mac's flow money will be in exactly in accordance with the documents, and there's no intention to --

THE COURT: And you are prepared to include some language in paragraph 7 as requested by counsel for Freddie Mac?

MR. GOREN: That is not a problem, Your Honor.

THE COURT: Okay. Fine.

MR. NEIER: Good afternoon, Your Honor. David Neier on behalf of Fannie Mae. And it's exactly the same issue.

That's why I arose to speak immediately after Mr. Moak, with respect to Fannie Mae. So if we could have the same assurances in the same place, that'll be fine.

THE COURT: I bet you're going to get the same assurances right now.

MR. NEIER: Thank you.

MR. GOREN: Same assurances and we will include them in the same portion of the order.

THE COURT: Fine. Anybody else who needs similar assurances?

MR. DONNELL: Good morning, Your Honor. Jim Donnell of Winston & Strawn. We need to get some different assurances. We filed a written objection. I'd like to pass a copy up to the bench.

THE COURT: Is this on behalf of Wells Fargo?

MR. DONNELL: Yes.

THE COURT: I've read it.

MR. DONNELL: Okay. So again, our client has -- provides bank accounts under -- a series of bank accounts under a deposit agreement originally with Wachovia Bank. And there probably is in excess of thirty million dollars currently in those accounts.

We have limited objections to the cash management order, really of two different types. The first type are what I would call technical or what I hope are noncontroversial

changes. In the pleading that we filed I actually provided a black-line copy of the debtors' cash management order with the changes that we would seek there. And if it made sense, I could just walk through that and the debtor could respond.

THE COURT: Apparently, it makes the most sense to walk through that with debtors' counsel as opposed to walking through it with me.

MR. DONNELL: We've provided it to them on multiple occasions, including over the weekend. But those are objections that we have that we feel that need to be made in order for the cash management order to comply with the existing deposit agreements.

And then sort of a second objection is --

THE COURT: Let me understand. What is it about the cash management order in its present form that's in any way inconsistent with the governing documents for your deposit agreement?

MR. DONNELL: Well, first of all, Your Honor, the -- I guess there are a lot of unknowns here. We've got references in the document to the effect that the credit agreement -- the DIP credit agreement or other orders would basically trump the provisions. And I think we've got -- we're seeking clarification that we can still deal with the debtors as our customer. The document has language to the effect that we're supposed to authorize -- be authorized to treat custodial

accounts as custodial accounts. I really do think these are -- should be noncontroversial changes.

We're looking for the debtor to provide stop payments on the items that it does not want us to pay, because physically, it's very difficult for us to distinguish what transfers the debtor has approved versus what they have not approved and what the Court has approved. So as a pre-condition to opening those accounts, they would be required to put a stop payment on it. That's the sort of things we're looking for. I don't know if Your Honor -- if you want to go through them one by one?

THE COURT: I sure don't.

MR. DONNELL: Okay.

THE COURT: I think that you should work this out with debtors' counsel, and if you can't -- I must tell you, I've been through a lot of these, and this is one of the few times that I've encountered an objection such as this. In the ordinary course of cash management orders that are sought on the first day, the goal is to not interfere with existing arrangements. And one of the things I guess I'm missing, and I'm going to look for some assurances from debtors' counsel, to what extent does this first-day cash management order seek in any way to alter existing arrangements with respect to the accounts that are the subject of this objection. Because if the answer is not at all, we don't have to deal with any of

this. If the answer is just a little, I want to know in what respect there's any change in existing practice. So that's a question for debtors' counsel.

And to the extent this is controversial, you're going to need to take a break and talk it through.

MR. DONNELL: That's fine. And, Your Honor, we would be satisfied with a statement in the order that says nothing in this order changes our deposit agreement.

MR. GOREN: Your Honor, the order already says that. Paragraph 4 of the order, "The transfer of funds by and among the debtors and their affiliates are made in accordance with the terms and conditions, and do not impair any parties' rights under any servicing agreements, deposit agreements or other similar document."

THE COURT: Sounds like it covers it to me.

MR. DONNELL: Okay. Well, perhaps he added -- it doesn't say "deposit agreements" last night at midnight, so I might have missed that addition.

MR. GOREN: That was one of the changes he had asked for --

MR. DONNELL: Okay.

MR. GOREN: -- that was added at their request.

MR. DONNELL: I apologize. I did not realize that that change had been made.

Your Honor, it's my understanding -- could I address a

second issue now? The second issue is our need to protect and preserve our security interest. So through this deposit agreement, we have a security interest in the deposit accounts and all the funds in the deposit accounts as well as contractual subordination rights that give my client priority over the claims of Ally Financial. Now, I'm happy to address those in the context of the Ally Financial financing motion and -- if that's more appropriate.

THE COURT: It probably is more appropriate.

MR. DONNELL: Okay.

THE COURT: Let's deal with it there.

MR. DONNELL: Thank you.

THE COURT: And you might as well stay close to the front of the room, because I think you're going to be coming up again.

Is there anyone else who wants to be heard at this point?

MR. CORDARO: Good afternoon, Your Honor. Joseph Cordaro, Assistant United States Attorney from the Southern District of New York, on behalf of the United States. And I just have a few very brief remarks, and I just think that this is a time to make them, given one of the Court's previous comments.

Your Honor, the government is supportive of the debtors' efforts. As Mr. Nashelsky pointed out, the debtors

have been working with a number of government entities over the past several months. And our overarching goal is to ensure that servicing functions are not deteriorating during this process and thereby putting borrowers at risk.

Just with respect to the cash management motion, it's our understanding that the proposed order is designed in part to allow the custodial accounts to continue their operations uninterrupted. And I think that was a theme of one of Your Honor's statements before that caused me to right at this moment. And it is our understanding that the order does that. But if our understanding is incorrect, of course, we would like clarification from the debtors.

And I will only say at this point that we look forward to further productive conversations with the debtors and other interested parties in this matter, as the process unfolds.

THE COURT: Okay.

MR. CORDARO: Thank you.

MR. GOREN: We can again, assure the government that the intention is for the custodial accounts to continue to function as they have so that the investors and borrowers are not affected by this bankruptcy.

THE COURT: Maybe we need to revisit, just for a moment, in what respect anything is changing. Because to the extent that everything is proceeding post-petition in the same manner as pre-petition, one would think that nobody would be

raising to object to anything. And this is a very unusual motion to fetch objections of this sort.

So can you provide some assurances, not only to me, but to those who have some concerns about this, as to what, if anything, is changing in order to accommodate the requirements of the DIP lenders?

MR. GOREN: I think that probably the easiest way to explain it is that it's changing at the top of each island. The money comes into our accounts the same way it always has. It flows through custodial accounts off to investors, to the agencies, in essentially the same way it always has. It's the fees and servicing advance receivables and other profits of the business that come in that are just -- are being segregated in a different way than it was pre-petition.

THE COURT: But the flow of funds as it relates to -- I'll use a traditional term -- waterfall -- that may not be the right term -- the way you divide up the money, that's going to be the same?

MR. GOREN: Yes, Your Honor.

THE COURT: And all rights of all parties will be unaffected by this, except the rights of the debtor-in-possession lenders, that are getting some extra protection in the form of being able to track their cash?

MR. GOREN: That's right. And that goes along with the other secured lenders, that process. It just enables us,

for other secured lenders, to track their cash as well.

THE COURT: Okay. I just -- in saying that in a simplified way, I don't want to change the meaning of what's really happening here. Have I said it in a way that you can endorse or would you make modifications to it?

MR. GOREN: No, we can endorse what you said, Your Honor.

THE COURT: Fine. On the basis of the colloquy that we've had, I'll return to what I was saying about twenty-five minutes ago. And this cash management motion is approved. But it is approved subject to all of the comments that have been made in the interval, and the various assurances that have been provided by debtors' counsel.

Let's move on to the next one.

MR. GOREN: Thank you, You Honor. If it's acceptable, I'd like to skip to number 6 on the agenda, the Barclays DIP, because I think that sets the stage a little bit better for the next two motions. We're seeking approval today on an interim basis of a 1.5 billion dollar debtor-in-possession credit financing facility led by Barclays. The facility is comprised of a 1.05 billion dollar A-1 term loan with an interest rate of LIBOR plus 400, and a 200 million dollar A-2 term loan with an interest rate of LIBOR plus 600, and a 200 million dollar revolver with an interest rate of LIBOR plus 400, all with a LIBOR floor of 1.25.

The facility has an eighteen-month maturity, but does contain various sale milestones which are well past the sale milestones that are contained in our various sale agreements, but would require us to have a sale order by February 15th and an exit or a consummation of the sale by April 15th.

We're seeking authority to day to borrow the entire term loan portion of the loan, which is 1.25 billion dollars. We recognize that borrowing 1.25 billion dollars on the first day of a case is a bit unusual, but this case presents compelling reasons as to why such a large initial borrowing is necessary. I'll get to those reasons in a bit, but I'd first like to explain what this DIP is not.

As I mentioned earlier, despite the debtors' exceedingly complex capital structure and its numerous secured credit facilities, the debtor has retained significant unencumbered assets in the form of advances and servicing rights on Ginnie Mae loans and a 250 million dollar exempt cash account. The DIP did not encumber those assets nor does it encumber causes of action under Chapter 5. However, as a result of our success in keeping our unencumbered assets unencumbered, the only realistic possibility to obtain debtor-in-possession financing was to refinance some of our existing facilities.

We've done that while creating substantially more liquidity for the debtors. So the initial proceeds of the loan

will go to refinance what we refer to as the GSAP facility, which is about 662 million outstanding secured by nonagency servicing advances and the BMMZ repo facility. And BMMZ, again, is a wholly owned subsidiary of Ally Financial. I'll explain a bit more, but in essence, the refinancing of these two facilities will allow us to bring assets into the estate that do not currently reside into the estate and might not have otherwise been available to creditors.

First GSAP. The debtors' largest cash need by far is servicer advances. And the primary facility the debtors utilize to fund those advances is the GSAP facility. The GSAP facility, however, involves a nondebtor offshore special-purpose borrower which the debtor had no ability to file in these cases and thus no ability to access the cash collateral of that debtor.

Under GSAP, the debtors sell certain of their servicing rights -- advance reimbursement rights to the GSAP borrower, which in turn pledges those to a lender. Absent the refinancing of that facility through the Barclays DIP facility, the GSAP facility would have gone into rapid amortization, which means all of the advance receivables that flow into that facility would have gone simply to pay down the lender, which in this case is also Barclays under that facility. And that would have severely constrained the debtors' liquidity, made it almost impossible for them to make their advances.

And in addition, there's meaningful oversecurity in GSAP. There's about a 200-plus million dollar equity value, and there was grave concern on the part of the debtors that if they allowed that facility to go into rapid amortization, the value of that equity interest might have dissipated or disappeared altogether.

And we actually, through the DIP facility, were able to obtain far more favorable terms for that lending than we currently enjoy under GSAP. GSAP has a seventy percent advance rate; the DIP facility has a ninety to ninety-five percent advance rate on the same assets, so substantially more liquidity.

BMMZ is a similar issue. BMMZ is a repo facility. So it's structured as a derivative repurchase agreement, pursuant to which BMMZ is actually the owner of the assets. And as this Court is well aware, such repurchase facilities are not subject to the automatic stay in bankruptcy. And therefore there was a concern that absent the refinancing of the BMMZ facility, BMMZ could have taken immediate action to terminate the repurchase agreement and sell the underlying mortgage loans to third parties, likely impairing or potentially eliminating the debtors' interests.

Like with the GSAP facility, there is meaningful excess value in the BMMZ repo. Specifically, as of the petition date, the facility had about 250 million outstanding,

but was associated with underlying assets in the form of a portion of the debtors' loan book, with a book value of approximately 473 million, or about a 223 million dollar excess value. And again, like with the advances, the debtors are getting a substantially higher advance rate through the Barclays DIP facility than they enjoyed under BMMZ. BMMZ was about a sixty percent advance rate; and we will get seventy-five percent under the DIP facility.

The process of bringing these assets into the estate is being accomplished through a purchase transaction which is proposed through the DIP order and the underlying documents. Pursuant to those repurchase transactions, the debtor will purchase the assets from GSAP and BMMZ and bring them into the estate. The order seeks findings that such purchase transactions are true sales and should be free and clear of all liens, claims and encumbrances, none of which we believe exist, because all existing liens are being satisfied through the refinancing.

Now, the other unusual aspect of this DIP facility is that the borrowers under the DIP facility are two newly formed special-purpose entities who are also debtors in this Chapter 11 proceeding. Because Barclays was not taking a lien on all of our assets, and because of the debtors' complex capital structure, they requested that the debtors segregate the primary collateral underlying their facility. They believed

that that would help significantly in the syndication efforts with the facility and ultimately keep the costs down to the debtors on the facility.

Thus, the assets currently in GSAP and BMMZ will be sold to and become the assets of the new DIP borrowers. Following the closing, as the debtors create new receivables for making advances with the proceeds of the DIP loan, those receivables will likewise be sold from the applicable debtor entity, generally either -- in all cases, either GMAC Mortgage or Residential Funding Company, sometimes called RFC, and those assets will be sold to the DIP borrower.

THE COURT: You said a lot. Let me ask you a question about one thing that you said that really caught my attention. Are you seeking, on the first day of the case, as a condition to approval of the DIP facility, a court order that deems the transfer of underlying assets from the BMMZ repo and the GSAP facility to the special-purpose entities that have been created for the express purpose of providing for this financing -- are you asking that I, today, determine that these are true sales?

MR. GOREN: That is in the interim order.

THE COURT: How on earth am I going to do that? And what's your record that's going to support that? And why won't counsel give an opinion which is sufficient for the lenders?

Why don't you just give that opinion? Why don't you do what every attorney has to do in a structured finance

transaction? Get comfortable, give the opinion. If you can't get comfortable, why should I be comfortable?

MR. GOREN: Perhaps we can speak with lender's counsel about that issue.

THE COURT: I think we better have that conversation right now.

Mr. Ziman? Why won't an opinion do it for you? And what do you expect me to do today to support this transaction?

MR. ZIMAN: Your Honor, you ask some fair questions, so let's --

THE COURT: You bet I am.

MR. ZIMAN: I wouldn't doubt it, Your Honor. To be clear, let's specify what we're asking of you. We're asking that the debtors' acquisition of these assets be deemed basically a true purchase by the debtors. That's all we're asking. We're not --

THE COURT: How do I know that?

MR. ZIMAN: Well, I think -- they're taking money and they're buying it from third parties.

THE COURT: So why do you need me to tell you that?

MR. ZIMAN: Well --

THE COURT: You just told me that it's a true sale. You should be satisfied. You shouldn't need a court order that says that. Or, if you're going to get a court order that says that, we're going to need an evidentiary hearing in which I

can, on the basis of whatever evidence you put forward that would be the same evidence that would go in somebody's reasoned opinion letter, that it's a true sale. But I don't have that record now. And if you think I have it, point me to it.

MR. ZIMAN: Well, I think we could step back, and I'll talk to debtors' counsel if you need take a break. But I think if you look through -- if we go through the Whitlinger affidavit and you go through Mr. Puntus' affidavit, but probably more Mr. Whitlinger's, I think the evidence is there that the price being paid for these is a fair price, that the debtors are getting the benefit of essentially the ownership of the assets, that there are no indemnification rights that relate back to the sellers of the assets that would make it as if they were still properties of the sellers' estates.

THE COURT: Okay, so that's your reasoned true sale opinion. But why should I, a judge who just happened to be here on a Monday, why should I as a help to Judge Glenn, and obviously as a help to the transaction, and as quite literally an officer of the court, not just counsel, why should I do what lawyers should be doing, what lawyers do every day in transactions pre-bankruptcy? And if I'm going to be, in effect, your insurance policy, you're going to have to do a lot more than say I can look at these affidavits. I read an affidavit of the first-day orders that was a hundred pages before exhibits.

MR. ZIMAN: It was 500 pages with, Your Honor; I appreciate that.

THE COURT: So why on Earth should you assume that a mere mortal, that would be me, should be in a position to give you the kind of assurance you're seeking, to provide admittedly a lot of money? It's over a billion dollars.

MR. ZIMAN: Well, I think that's part of what's going on here.

THE COURT: I realize there's a lot of money, but you shouldn't be looking to the guy in the black robe to be giving you an insurance policy without giving me the record that I need. And that record will not happen on day one unless you're prepared to stay very late.

MR. ZIMAN: Well, not --

THE COURT: I'm prepared to do that if it's required. But you're going to need witnesses; you're going to have to explore the background of the transaction. You're going to have to explain this in a way that you would be comfortable giving an opinion on behalf of your firm and you would be comfortable committing your firm's malpractice coverage to the quality of that opinion. And if you can do that, you don't need me.

MR. ZIMAN: With all due respect, Your Honor, it sort of becomes circular. So if we could prove it to you that it's a true sale, then you're going to tell us we don't get it

anyway.

THE COURT: I believe that for you to be doing what you're insisting on is fundamentally unfair. I'm telling you that very directly. I should not be asked on day one of a case, as a condition to the financing that supports a very vital financial institution, to be committing that something is a true sale, without your taking me through it soup to nuts. And if you're going to take it soup to nuts, all you're really saying is, 'We just want the protection of a court order that says that.' You actually don't need that, because you know this deal so much better than I could ever learn it on the basis of an evidentiary showing tonight. I'd like you to rethink what you're doing.

MR. ZIMAN: I hear, Your Honor. We'll have to take a break, and we'll have to talk about it.

THE COURT: Let's take a break.

(Recess from 5:27 p.m. until 6:00 p.m.)

THE COURT: Be seated, please.

MR. ZIMAN: Your Honor, Ken Ziman of Skadden, Arps, Slate, Meagher & Flom, on behalf of Barclays Bank PLC as proposed DIP agent and, for today's purposes, DIP lender. Your Honor, thank you for the time. I think we've managed to address the Court's issue. It's going to take some working on the order, which we'll undertake. But just big picture, there's two different buckets of assets, as Mr. Goren

explained, that are being acquired by the DIP borrowers; one is what's referred to as the GSAP facility in purple. With respect to that transaction, that's a purchase between the borrowers and the GSAP borrower, which is an off-balance-sheet entity. We won't require any findings from Your Honor regarding true sale on any of this, but that transaction will take place as it's intended, without those findings being made.

With respect to the BMMZ repo facility, as Your Honor heard from counsel, BMMZ is an indirect or direct subsidiary of AFI, the parent company, the nondebtor parent. And in discussing with AFI's counsel, BMMZ is essentially giving us a representation -- giving the initial buyer, which is one of the debtors, a representation that there are no liens on the assets that are being reacquired. In order to deal with this issue for at least today's purposes, AFI will guarantee that representation to give us the comfort that the DIP borrower, at the end of the day, has an asset that's not subject to somebody else's lien.

I think, Your Honor, what Mr. Goren can amplify, we do intend to create a record regarding the good faith of these transactions and the true-sale nature of these transactions, for final order purposes. I think Your Honor will tell me that that's for Judge Glenn to decide on a full and complete record when we show up there, but I just wanted to give Your Honor a preview of that.

THE COURT: Do I understand that you're going to put some of that record on today?

MR. ZIMAN: No, Your Honor.

THE COURT: That's good.

MR. ZIMAN: Today we're solving the issue by not asking Your Honor --

THE COURT: Fine.

MR. ZIMAN: -- for those findings.

THE COURT: But what you're telling me is that, for purposes of the final order, there will be a request from the Court, in the person of Judge Glenn, to enter a final order that will include a determination that the transaction is a true sale?

MR. ZIMAN: Correct, Your Honor.

THE COURT: All right.

MR. SCHROCK: Good afternoon, Your Honor. Ray Schrock of Kirkland & Ellis, on behalf of Ally Financial and Ally Bank.

In participating in this solution, Your Honor, we certainly would have been willing to take an opinion or the like. Just so you have some history on this BMMZ facility, I think it's important for the Court and other parties to know that this was a third-party repurchase facility that was in place by Citibank and Goldman Sachs since 2010. AFI refinanced it in December. Barclays, effectively, asked AFI to sign onto the payoff letter from BMMZ so that the DIP facility could

close. This has been one of the ongoing issues that Ally Financial has been dealing with. We've been giving and giving. We want to make sure that the debtor is protected and gets the debtor-in-possession financing. And we're willing to rep for the current period that the sale is free and clear, but we would like the debtor to seek a free-and-clear order at the final hearing. We certainly don't intend to guarantee the free-and-clear nature for the remainder of the proceedings.

THE COURT: I understand what you've said.

MR. SCHROCK: Okay.

THE COURT: It's on the record.

MR. SCHROCK: Thank you.

MR. GOREN: Thank you, Your Honor, for your indulgence during the break. I'm glad we came to an acceptable resolution there. I mean, I had a bit more here. I'm not sure if Your Honor would like some further support of the need for the immediate financing from the debtors. I'd be happy to --

THE COURT: There's no question you need the financing.

MR. GOREN: Okay. Then I will let anyone else who has any comments, objections rise. Oh, I was asked to state for the record, by Freddie Mac's counsel, that the DIP loan does not encumber any of Freddie Mac's accounts.

THE COURT: Okay.

Mr. Masumoto?

MR. MASUMOTO: Thank you, Your Honor. Your Honor, I did want to mention again, as the U.S. Trustee had indicated, that we tried to accelerate the organizational meeting process, because of the rapid series of events that are occurring in this case, as well as the magnitude. And I think it will be helpful if the debtor indicated why, for example, the creditors' committee could not have input on this, particularly the billion dollar rollup that they're proposing, as indicated. We are scheduled to have an organizational meeting two days from now, and we were concerned about whether or not the committee should have an input into this large rollup.

In terms of specific features of the DIP financing arrangement, we have spoken with both the DIP lender, and we mentioned to the debtor our concern over the provision that appears that whereas the liens carve out a -- there's a carve-out -- perhaps that's not the correct term. They exempt from the liens the Chapter 5 causes of action. But with respect to the superpriority admin claim, there is no exemption for the Chapter 5 causes of action. From our standpoint, that's effectively the same as impairing those Chapter 5 causes of actions at this point, without, again, having the input of a committee. And therefore, we're concerned about those provisions.

Similarly, I think, because the DIP financing and the cash collateral orders tend to overlap, that concern appears to

be consistent throughout all of the orders, both the cash collateral and the DIP, that with respect to superpriority admin claim, Chapter 5 causes are not carved out.

MR. DONNELL: Your Honor, Jim Donnell again, for the Wachovia/Wells. We have not consented to priming but, again, the focus of our objection is with respect to the DIP financing procedures and liens given to Ally Financial. So I can wait, or maybe this is the right time to bring that up.

THE COURT: What is it you're bringing up?

MR. DONNELL: I'm confused on whether we're objecting -- whether we're addressing all of the DIP financing, including that provided by Ally Financial, or only the Barclays facility.

THE COURT: I think we determined a while ago that we were going sequentially. We're currently dealing with the Barclays DIP.

MR. DONNELL: Okay, so then we're not consenting to that. We'll reserve our rights to the final. But we'll address our chief objection in the context of the Ally Financial. Thank you.

MR. CORDARO: Good afternoon again, Your Honor. Joseph Cordaro, Assistant United States Attorney, on behalf of the United States.

And I just wanted to voice a concern that the government has with the proposed DIP order. Like most DIP

orders, it provides for a superpriority admin expense claim, but it does not specify the right of the United States to assert a valid right of setoff or recoupment. Section 553 provides that the Bankruptcy Code doesn't affect what is essentially the equitable right of setoff and recoupment. And just because a DIP financing order grants someone a superpriority admin claim, that doesn't necessarily -- that does not impinge on the United States' valid rights of setoff and recoupment. And for that reason, we typically ask for and have received, in DIP financing orders in the past, language such as "Nothing in this order shall discharge, release or otherwise preclude any valid right of setoff or recoupment that the United States, its agencies, departments or agents may have." We've had conversations with the DIP lenders through debtors' counsel, and they have agreed to other language that we have proposed, but this one is still a sticking point and we don't believe that there's any basis under the Code to not include this language in the order.

THE COURT: Okay, sounds like we have a sticking point.

MR. ZIMAN: Your Honor, I'll address, I guess, both those, maybe, if that's okay: Mr. Masumoto's point and also the U.S. Attorney's point. I'll go backwards first. The U.S. Attorney's point: On page 31 of the order, we actually included language that reads, verbatim, "For the avoidance of

doubt, nothing in this order or the Credit Document shall discharge, release or otherwise preclude any setoff or recoupment rights of the United States of America, its agencies, departments or agents." And we put in the junior lien collateral. And that's, I think, the sticking point that the U.S. Attorney wants to be plenary. And I think that if this were perhaps a different DIP financing, maybe that's a well-taken comment, but I don't think here it is, because as we talked about, these are very bucketed. And the collateral -- the first lien collateral, distinct from the junior lien collateral in this DIP financing -- I'll explain the difference. The first lien collateral is the stuff that's off balance sheet today. It's our view that nobody has rights in that stuff, other than we're going to -- acquiring it free and clear. That's the colloquy we just had. That's the recess we took. So we're not prepared to lend with people who are reserving rights that we don't think they have but, if they think they have, then they should articulate them other than in a general sense, because at the end of the day, somebody who has an interest in property has the burden of showing they have an interest in property. That's point one.

The junior lien collateral is comprised, in part, of whole loans, which are nonagency whole loans, just loans that the debtors have reacquired or were never sold -- they were nonconforming loans, for instance -- or loans -- and also

there's a small piece of that collateral pool that is comprised of Freddie Mac servicer advances. So as the junior lien collateral, we are acknowledging that Freddie has setoff rights, recoupment rights, and that would then be consistent with the reservation I just read, more generally the U.S. Attorney asked for, the junior lien collateral.

Likewise, the other component of the junior lien collateral is the Citi MSR. And by definition, the Citi MSR, I believe, finances Fannie Mae MSRs, or is lent against Fannie Mae MSRs. Again, that's an agency of the United States, I guess. I'm not exactly sure what the GSEs are these days. But, again, we provided for comfort on that point.

So this is a very, very narrow issue. And I think, in the circumstance of this financing, that we're making substantial advances to assets that are off the balance sheet. We've given, yes, a slightly narrower carve-out than the U.S. Attorney may have received in other cases, but I think that's warranted here on the facts. And if there's a specific interest that they're asserting in this first lien collateral that currently resides in third parties, well, we'd like to know about it, because it's pretty important to us. And we don't want to provide a billion dollars or a billion-two-five out the door to find that they're asserting some other interest.

The typical example the U.S. Attorney's trying to

protect against is the tax refund, Your Honor. I mean, typically the U.S., they want to make sure that they're not having a setoff and giving up tax refunds by virtue of a DIP lender taking a security interest in a tax refund. And we're not taking security interests in tax refunds.

So I think, given this construction of this facility and how it blends together with the others you'll hear about, the carve-out we provided is ample protection for the United States in these circumstances.

Mr. Masumoto's point on the 364(c)(1) issue, I think there's a difference between having a claim against the estate for a shortfall in your collateral, and having that claim rank at the top of the heap and taking a lien on an asset that you can control and dispose of to your own liking. Now, all we're saying is that if we're unpaid on our collateral at the end of the day, that we're entitled to get paid from whatever's there. And that's, I think, different in kind than taking a lien. And we were very careful not come in here, Your Honor, and take a lien on Chapter 5 causes of action. And generally I'm sure, from your position, you look at counsel who stand in my position and say you can't have that, a lien on avoidance actions. So we didn't come in and ask for it. And we're not asking for it on a final basis either. But I do think what we are asking for is just to rank at the top against all assets of the estate, to the extent we're not paid back any of our

collateral, i.e., or the sale proceeds at the end of the day.

THE COURT: Okay.

Any further comments?

MR. CORDARO: I do, Your Honor. Again, Joseph Cordaro, Assistant United States Attorney, for the United States. Your Honor, I'm going to quote from Section 553.02 of Collier: "The Bankruptcy Code provides no general equitable mechanism for disallowing rights of setoff that are expressly preserved by Section 553." Section 553 expressly preserves the United States' right of setoff in this situation. It is language we --

THE COURT: Well, Section 553 expressly preserves rights of setoff that exist.

MR. CORDARO: That's correct, Your Honor.

THE COURT: It doesn't create rights of setoff.

MR. CORDARO: Absolutely correct, Your Honor.

THE COURT: So what Mr. Ziman is really saying, if I'm hearing his argument correctly, is this is not debtor property right now. The nondebtor property is going to come into the estate and we're going to be looking to that as new lenders putting in over a billion dollars into this company. And if the government is saying they have some kind of right, I don't want to hear about it in general terms. I want to know what you're telling me, because, as a new lender, I want to know if I'm lending into a risky situation.

So a question to you is whether you're simply trying to preserve something because that's what the government likes to do in situations like this and is looking for broad language, or do you have some kind of claim that you're actually trying to protect? If so, tell us.

MR. CORDARO: Your Honor, no, at this point it's the former. We just want to be sure that the language that's in the order doesn't suggest that we have given up some statutory right of setoff that we have. And by putting language in that suggests that our right of setoff only goes to the junior lien collateral, it could be inferred that we've given up setoff rights that we are --

THE COURT: No, you wouldn't have given anything up. It would have been ordered that you don't have those rights. So in effect what you're trying to protect against is the efficacy of an interim order that gives the lenders what they're looking for, correct?

MR. CORDARO: To the extent they're seeking to -- yes, they're seeking to confine our setoff rights to junior lien collateral, yes, we think that's inappropriate and that --

THE COURT: And do you believe, as a matter of law, that you have any current claims of setoff or recoupment applicable to the assets that are coming into the estate to secure the new lending?

MR. CORDARO: As I stand here, Your Honor, I don't.

But, again, I don't want to suggest that those don't exist. These things are moving very fast, so I don't want to represent to the Court that I have a belief, and then go back and find out that that belief --

THE COURT: Okay.

MR. CORDARO: -- was incorrect.

THE COURT: I understand.

MR. CORDARO: Thank you.

MR. MASUMOTO: Brian Masumoto for the Office of the United States Trustee. Just briefly, Your Honor.

I do want to articulate again the usual standard. I mean, many people regard the giving of a superpriority admin expense over Chapter 5 essentially the equivalent of a lien. And here Chapter 5 causes of action are bankruptcy-created actions, typically an element for the creditors' committee to at least have something to negotiate with. So again, we urge the Court not to, at least for the interim purposes, until a committee's formed, allow the superpriority admin expense to cover the Chapter 5 causes of action. Thank you.

THE COURT: Okay.

I think what's different about this situation as it's playing out now this evening is that, contrary to what we often see in pre-negotiated filings in large Chapter 11 cases where pre-petition lenders are providing post-petition liquidity in rollup facilities, this is a situation in which we have new

lenders with a new syndicate being put together by Barclays Capital, and the collateral that secures the facility includes, at least in this instance, assets that are not presently within the debtor estates. Based upon that and the critical need for liquidity without interruption, and the importance that this debtor represents in the marketplace for residential financing, it seems to me that both objections should be overruled for purposes of the interim order.

I'll start with the U.S. Attorney's position on setoff and recoupment. Of course he's right, because he's reading what the law generally provides. But just because the law generally provides that does not mean that in extraordinary circumstances such as this, DIP lenders are not entitled to certain assurances, right at the beginning before they fund, that they're going to be protected with respect to their advances. Under these circumstances, and particularly since, as I understand the facts, the collateral base consists of assets that presently reside outside the debtors and are to be brought into the debtors' estates simultaneously with the closing, I think that the broad language sought by the U.S. Attorney is unnecessary. I'm not going to say it's inappropriate. But I also think that rights need to be reserved. This is just the interim hearing. And just because certain provisions are set forth in the interim facility order does not necessarily mean, after the formation of a committee

and time for the parties to reflect on the case as it unfolds between now and the final hearing, that there might not be changes. For interim order purposes, I'm going to overrule the U.S. Attorney's objection.

Similarly, with respect to the objection raised by Mr. Masumoto on behalf of the U.S. Trustee, I would agree with him that ordinarily there is equivalence between the grant of a lien in avoidance actions and their proceeds, and a superpriority that applies to such debtor rights. But under the present circumstances, I'm going to overrule that objection as well.

I will note that in other situations I have from the bench insisted that there be a carve-out of superpriority claims as well as liens, with respect to Chapter 5 avoidance actions and their proceeds. But I'm going to draw a distinction today as it relates to this financing. In excess of a billion dollars is a very significant new-money loan in any market. And to the extent that there is any loss on account of the actual collateral that secures this loan, we're in a very different environment from the environment that supports the underwriting of this loan. It seems to me highly unlikely that the loan was underwritten with the view that superpriority claims would be the last and ultimate way to obtain a recovery, particularly as it relates to avoidance actions and their proceeds. If we're in that place sometime in

the future, everything that I was told at the outset of this hearing will have proven to be completely unreliable and false.

In part for that reason, and because I believe that the DIP loan in this instance is a necessary prerequisite to the orderly commencement of these cases, I'm overruling this objection, but it's not precedential in respect of other DIP loans that may be submitted to me in the future in other settings. I think this is a special case.

But for reasons previously stated in reference to the U.S. Attorney's objection on setoff and recoupment, this is just an interim order and I'm just sitting here as a judge of the moment, not a judge of the case. And for that reason, I do not wish my interim approval to in any way bind what Judge Glenn might decide when he sits at the time of the final hearing.

So the order will be entered in the form acceptable to the DIP lenders as to both of these issues. But as to what happens at the time of the final, the committee and other parties will need to convince Judge Glenn that such a determination is appropriate in forty-five days.

MR. GOREN: Thank you, Your Honor. We will need a final hearing. Should we just consult directly with Judge Glenn's chambers on that, I assume? A final hearing date for the purposes of the order, should we just --

THE COURT: You're going to have to confer with Judge

Glenn's law clerks, who are present today.

MR. GOREN: Okay. We'll speak with them after the hearing.

THE COURT: Do you need that at this moment, or can we do that --

MR. GOREN: We can do it after the hearing.

THE COURT: Let's do it after the hearing. I'm also going to, as a practical matter, have to so order this record for purposes of all of the findings with respect to cash collateral, cash management and DIP lending, because at this hour it is not practical for us to actually enter orders on the docket. It's not going to happen till tomorrow morning. I'm assuming that the DIP loan, in particular, will not close until sometime tomorrow.

MR. GOREN: I believe that's the anticipation, Your Honor.

THE COURT: Fine. So you'll have an order in form satisfactory to you before you close.

MR. ZIMAN: Your Honor, just to be clear, certain of the orders tomorrow are conditions precedent to the DIP loan closing, so we're -- you know, it'll close tomorrow.

THE COURT: Fine.

MR. ZIMAN: Thank you.

THE COURT: All I was trying to make clear was that we're not going to have orders filed on the electronic docket

this evening.

MR. ZIMAN: Yes.

MR. GOREN: Okay, thank you, Your Honor. The next motion I'd like to present is the motion to approve a second debtor-in-possession financing facility with our parent, Ally Financial, and the use of Ally Financial and the junior secured bonds cash collateral. Even though we obtained a, as you noted, very substantial DIP facility from Barclays, we realized, as the filing date approached and some of the projections changed, that we lacked sufficient liquidity to fund the debtors' second largest cash expense, which is, repurchasing certain whole loans that were sold into securitization trusts guaranteed by Ginnie Mae. I'll call those Ginnie buybacks.

Under the Ginnie Mae guides, if whole loans in a trust guaranteed by Ginnie Mae collectively exceed the delinquency rate specified by Ginnie Mae, the debtors are obligated to repurchase a group of those loans sufficient to decrease the delinquency rate below the specified level. The amounts paid by the debtors to repurchase these loans are substantial, but they are reimbursable, because the loans are either partially insured by the FHA or partially guaranteed by the VA. So we end up getting a substantial portion of the money we paid by these loans back by submitting claims. And we can also frequently fix whatever the delinquency is and then sell them

back into a Ginnie Mae trust. So it doesn't end up being that big of a net cash outlay to the debtors, but the gross is significant. In fact, in 2011 the debtors repurchased over 4,700 loans at a value of approximately 745 million dollars.

If we were to stop doing the Ginnie Mae buybacks, we'd face at least two serious consequences: one, borrowers may refuse to make their mortgage payments to the debtors, impairing our ability to meet our servicing obligations; and two, we would face the possible termination of our Ginnie Mae servicing rights, which, as I noted before, is one of the estate's unencumbered assets, and that could be a substantial loss to the estate's general unsecured creditors.

So the debtors seek this additional debtor-in-possession financing facility for the sole and limited purpose of doing the Ginnie Mae buybacks. AFI has agreed to provide us that facility by means of an advance on the Ally line of credit, which has substantial equity value in it. There's about -- as noted, there's about 380 million outstanding as of the petition date on that facility. And the collateral, on the debtors' books at least, is valued at about 1.5 billion. So there's a substantial equity cushion in that asset, in that collateral. And so AFI, through the DIP loan, will be taking liens on the Ginnie Mae assets that they purchase, and they're priming themselves on the Ally LOC, for purposes of the loan.

So we're seeking eighty-five million today on an

interim basis, with the remaining sixty-five million to come upon a final basis. And there's also a possibility that Ally will agree to provide another seventy million. We're still working through some of the numbers, trying to figure things out. So the documents currently provide that we'll negotiate in good faith. But the total ask at the final hearing could be up to 220.

Under this facility, there are no fees payable to Ally Financial. They have agreed to the same interest rate as the A-1 term loan on the Barclays facility, which is LIBOR plus 400. And the proceeds use is limited to the Ginnie buybacks. They're also seeking an administrative superpriority claim, which is junior to Barclays' superpriority claim.

That is the DIP facility in essence, Your Honor. The motion also seeks the use of cash collateral of AFI in its capacity as lender under the Ally line of credit -- AFI, in its capacity as lender under the senior secured credit facility, which is oftentimes called by people within the company as the Ally revolver -- which is a bit of a misnomer. It used to be a revolver. It no longer revolves, but that's how people in the company refer to it, so I may refer to it occasionally in that way, too.

The debtors propose to grant the following forms of adequate protection on the Ally LOC. They will give senior liens on the LOC, which are junior only to the DIP lien but

senior to the liens granted to Barclays under their DIP facility. And they will make current interest payments to Ally at the nondefault rate. There will be, however, no payment of Ally's professional fees. And then Ally will be granted a superpriority claim junior to Barclays' and the AFI DIP loan, but pari passu with other cash collateral orders.

With respect to the Ally revolver or senior line of credit, they will receive a similar adequate protection package. However, in addition, they are also receiving -- with respect to both Ally and the junior secured bonds, we've also agreed to grant them limited adequate protection replacement liens -- adequate protection liens on the Ally line of credit, since there's not enough collateral. So to the extent there was a diminution in value in solely the revolver and blanket lien collateral that covers the revolver and the junior notes, there was concern that they might not have adequate assets to look to. So we've agreed to give them a second lien on the Ally LOC -- or fourth lien, I guess, behind the two DIP loans and Ally adequate protection claims, solely to the extent of any diminution in value in their collateral.

The other somewhat different aspect of their adequate protection package is we're granting them a replacement lien in the equity of the DIP borrowers. And the reason for that is the revolver and junior notes are secured. One of their -- part of their current collateral is an equity pledge of the

preferred shares of the GSAP facility. So, ultimately they would have been entitled to any equity that would have flown up to the debtors through the GSAP facility had that facility unwound in the normal course.

Similarly with respect to BMMZ, because they have a blanket lien that captures anything, the repurchase agreement is arguably a general intangible. And there was a view, which the debtors did not dispute, that they had a lien on the debtors' equity value in the repurchase facility, which is captured by the blanket lien. So because in two different senses they had an equity interest in the assets that we were putting into our DIP borrowers, the debtors believed it made sense to grant them a replacement lien on the equity of the DIP borrowers. So that will be the other part of their adequate protection package.

And then finally, Your Honor, we have stipulated to the validity of the junior secured bonds, liens and claims, subject to a seventy-five day challenge period. I think it's important to note we have not stipulated to the validity of Ally's liens and claims. Though as noted by my colleague Mr. Nashelsky at the outset, we do propose a comprehensive settlement with the parent, which would resolve our potential claims with respect to those facilities, and that will be consummated through a plan of reorganization. But creditors will have until the confirmation hearing to evaluate those

claims and the proposed settlement. So we're not seeking to impose any kind of a challenge period on creditors as to Ally's debt.

And that is all I had on that, unless you have any questions.

THE COURT: Does anyone have comments on this?

MR. MASUMOTO: Brian Masumoto again, for the Office of the United States Trustee. Your Honor, just to be consistent, because there was a distinction made between the type of DIP financing that was advanced by Barclays, in this case I believe that the Ally DIP includes also a superpriority admin claim over the Chapter 5. If Your Honor regards this DIP advanced by Ally to be comparable to Barclays, we understand your ruling. But to the extent it does not, our objection to the extension of the superpriority admin claim over Chapter 5 applies. Thank you.

THE COURT: Okay. Before I hear from Wells Fargo's counsel, I'd like to hear from Ally's counsel on the issue of a superpriority as against avoidance actions, given the relationship of Ally as lender to the borrower entities.

MR. SCHROCK: Your Honor, I'll have to confer with the third lien holders, but Ally would be fine, solely for purposes of the interim hearing, waiving a superpriority claim on Chapter 5.

THE COURT: I appreciate that, because you wouldn't

have gotten it.

MR. SCHROCK: I thought so, Judge. It informed my decision.

MR. UZZI: Just to close the record -- or the loop on Mr. Schrock's comments, Your Honor -- just for the record, Gerard Uzzi of White & Case, on behalf of certain ad hoc consenting lenders, I should say, or consenting holders, what we're referred to as under our PSA.

THE COURT: It's not a group, it's not a committee; they're just consenting lenders.

MR. UZZI: We will be -- no, we will be filing a 2019 statement, Your Honor, so we won't be having that argument again.

THE COURT: Good.

MR. UZZI: We're fine, Your Honor, with not taking the -- as Your Honor had articulated, the 507(b) issue.

THE COURT: Thank you.

MR. UZZI: Thanks.

MR. DONNELL: Your Honor, I'll be very brief. We're asking for two things: one is preservation of our rights, our contractual subordination rights, against Ally Financial. We have a subordination agreement in our deposit agreement that provides that all of our claims are senior to the claims of Ally Financial, with respect to any of the ResCap entities. The order that's proposed to you would change that priority and

provide that Ally Financial has priority rights, subject only to the carve-out and nothing else. So I've outlined -- I've highlighted the provisions of the order that I think are problematic.

THE COURT: Okay, I don't want to get into order-drafting at this time, as much as I would like to get into the concept that we're dealing with. Are you objecting to the priming by a DIP loan? Is that what you're objecting to? Or are you saying whatever priming exists has to be subject to the contractual subordination provisions that govern your contract? I'm just trying to understand what you're --

MR. DONNELL: No, it's a good point.

THE COURT: -- what you're saying.

MR. DONNELL: It's a good point. They are two separate things. And it's the second that we're most focused on. I'm not consenting to the priming, because we haven't been given replacement collateral. Okay, that's the other thing I'm asking for; that's the second thing. So it's two things: we've got contractual subordination rights that we want preserved, against Ally Financial, and we understand that our bank accounts in which we have security interests are going to go poof or go to other lenders, but we need replacement collateral for that. And what we're suggesting is that we simply get the same replacement collateral that Ally Financial is getting, because that's also consistent with our

subordination agreement with Ally Financial.

THE COURT: So your objection is seeking, A, in effect, specific enforcement of the subordination provisions and your financing arrangements, and B, adequate protection? Is that right?

MR. DONNELL: I would change A slightly. Instead of specific performance, I'm trying to undo what they have in there that says our rights go away -- our subordination rights go away. And the second is correct, yes. If all the money in our bank accounts in which we have a first priority security interest are going to go to another lender or are going to be spent as cash collateral, then we need additional adequate protection, not just what's in the cash management order but an actual replacement lien. And so as not to interfere with the other lenders, it seems to me the simplest thing is to simply give us the same adequate protection collateral that Ally Financial is getting.

THE COURT: Let me hear from Mr. Schrock.

MR. SCHROCK: It's, Judge, Ray Schrock on behalf of Ally Financial.

I have to admit, this one confounds me. Just so Your Honor has some context for what the relationship is of Wells Fargo in the capital structure of ResCap, Wells Fargo was formerly the cash management banker for ResCap. There's approximately thirty-three million dollars, we understand, left

in an account, now that ResCap has moved all of their cash management over to JPMorgan. So there's -- and that sits in an account where the Ally revolver has a control agreement. One, we've asked counsel a number of times what are his setoff rights, what are we protecting. This account is going to be closed next week. They're moving -- we understand that the debtors are moving the cash over, and we don't understand what their claim is. To the extent counsel wants adequate protection, I would say have him -- I want him to articulate what his loss is or what he's concerned about, and we could certainly chat about that and giving him adequate protection, but this isn't an account where we have a lien.

Second, Your Honor, Ally Financial is not going to stipulate to this sua sponte, this guarantee that was put in place unilaterally on a deposit account agreement in the months leading up to the Chapter 11. And I don't even understand what the loss would be. Here we're giving a DIP loan. The debtor has come to us and said we would like you, Ally, to make another accommodation. We said that we would be willing to do so with a court order, under the right circumstances. We want to make sure that the taxpayers get repaid for their investment, who own seventy-four percent of Ally Financial. But to ask us to subordinate an entire DIP loan and an entire pre-petition revolving credit facility to a thirty-three million dollar account or some charges that we don't even know

about, seems out of line.

THE COURT: Well, I don't really know enough to make a ruling on this, but it seems that it falls into the category of this either is or is not like a permitted lien in a DIP financing arrangement in which certain prior rights are carved out in order to, in effect, push to one side the litigation time and expense and risk associated with having to litigate such things right at the outset. Now, that may or may not be the right characterization, but that's the one that I'm making having heard this argument.

What I don't understand is why the lawyers are arguing about this in a warm courtroom at a quarter to 7 at night, as opposed to working something out, because what you've just said is that the Wells Fargo position is de minimis in relation to the issues that are before the Court, and the amounts that are involved.

MR. SCHROCK: Yes, Your Honor.

THE COURT: And so in effect what you're saying is 'I don't know why they're being so difficult, because they have no position here to protect.' I'm paraphrasing. Is that a fair paraphrase?

MR. SCHROCK: That is very fair, Your Honor.

THE COURT: Okay. So I'm inclined not to have Wells Fargo lose, but they're about to. So my suggestion is that the two of you, before we close the record, have a conversation in

the hallway together to see if you can rationally resolve what seems to be a very small issue.

MR. SCHROCK: Thank you, Your Honor. That's all we're asking for.

THE COURT: Okay. Why don't you go do that.

MR. SCHROCK: All right. Thank you.

THE COURT: Why don't you go do that now.

MR. DONNELL: Yes, sir.

MR. SCHROCK: Will do.

MR. GOREN: This one should hopefully be a bit simpler and a bit quicker. The last cash collateral motion is the one with Citibank, N.A. As previously noted, they have a security interest in various agency master servicing rights; those are Fannie and Freddie master servicing rights. They get -- we're offering them a fairly standard adequate protection package of replacement liens on their same assets, superpriority claim junior to the DIP superpriority claim but pari passu with other cash collateral providers, and interest paid at the nondefault rate, and payment of fees. We do believe the facility is meaningfully oversecured, so we have no issue paying the interest. And in particular, the purchaser has -- the portion of its bid allocable to the agency MSRs is about 360 million, and there's about 150 million outstanding. So there's a significant equity cushion available in the facility.

The security interest, including adequate protection

interest taken by Citibank, is expressly subject to all of the agency interests under the order, Fannie and Freddie's interests in the servicing rights that are secured. So I believe we've agreed with language with them on that and they find that satisfactory.

We do stipulate to the validity of their debt and liens and claims, and provide a seventy-five day challenge period.

Any other --

MR. MASUMOTO: Your Honor, if I might ask the concession on the Chapter 5 causes of action on the superpriority --

THE COURT: Let's see if we can get it for you. I bet we're going to get it.

MR. SOSNICK: Good evening, Your Honor. Fred Sosnick from Shearman Sterling, on behalf of Citibank, N.A. I think we would be prepared to make that concession for tonight. I think we do have reasons why, for the final order, we think it's appropriate, but I don't think we need to belabor that tonight. I think we're adequately protected until the final hearing.

THE COURT: I think you are, too.

Any other comments?

Fine.

MR. GOREN: Thank you, Your Honor. Your Honor, we did also file a motion to file the Barclays fee letter under seal.

I'm not sure --

THE COURT: Are we saving that to the very end? That's probably the most problematic motion that I've seen in this first-day packet. So let's spend a little time on that.

MR. GOREN: It's the debtors' point of view that it is appropriate in this case to file the fee letter under seal, in particular because this is a syndicated deal, there is market flex available in the package, and we do believe it would be harmful, not just to Barclays but to the debtors, for the market to be able to see what type of flex is available. We think it more likely the facility to be flexed in that instance and ultimately costing the debtors' estates more money.

THE COURT: Okay, I understand the issue, and I'm going to give the U.S. Trustee an opportunity to comment in just a moment. But let me frame my concern so you understand how I look at this. The amount of the fees has been disclosed in gross amount, something in excess of fifty million dollars.

MR. GOREN: That's correct.

THE COURT: I saw that. I also looked at the several allegedly confidential documents to be filed under seal that are the fee letters in question. I recognize that when we're talking about the pricing of a debtor-in-possession facility, we are dealing with sensitive commercial information. But we're also dealing with that information in a somewhat unique setting. It's the fishbowl of bankruptcy. And on day one you

are asking for a sealing order with respect to a document that's clearly material to the financing as a whole. Without getting into the specifics of the flex as you describe it, I noticed that there are any number of potentially material terms to the financing that are built into the flex, in terms of changes to the relative amounts in the designated facilities, if I understood it correctly.

MR. GOREN: That's correct, Your Honor.

THE COURT: And in part for that reason, this isn't just pricing; this is the very structure of the facility. And one of the terms that I noticed went to the maturity date, which I believe can change by a number of months that I won't state on the record because that is presumably confidential information. But the fact that that exists as a term is material to all parties-in-interest in this case.

So in part for that reason, I'm just letting you know -- and you can think about this overnight; we don't have to decide this today, because we have another hearing date tomorrow at 11, which will be here before you know it -- I have some problems with this. And I believe that it is at least possible, instead of sealing these documents, to redact them, and I believe it is also possible to provide summaries of the relevant terms so that parties know what's at stake here. I don't view this as inconsequential, but I also recognize that we're dealing with sensitive information, but it's sensitive

information that parties-in-interest have a right to know, at least in general terms.

MR. GOREN: Very much appreciated, Your Honor. We will speak with Barclays' counsel overnight and the U.S. Trustee and see if we can come to resolution by tomorrow or, if not, perhaps put the motion off a little bit and --

THE COURT: Yeah. Now, I saw that Mr. Masumoto was standing to say something when I was speaking.

MR. MASUMOTO: Your Honor, in fact, the redaction procedure has been utilized in other cases and has been satisfactory for our office. So we're happy to discuss that procedure with the debtor and the DIP lender.

THE COURT: Okay.

MR. GOREN: I'm sure we'll be able to come up with something that works, Your Honor.

THE COURT: Now, we have a couple of gentlemen who are out in the hall, and it would be great if they could come in and tell me that that particular loose end from the Ally financing has been wrapped up. And then we can go home, or go back to work, as the case may be.

MR. SCHROCK: Hello, Your Honor.

THE COURT: Hello again.

MR. SCHROCK: Ray Schrock on behalf of Ally Financial. I think we have an agreement.

THE COURT: Good. What is it?

MR. SCHROCK: Wells Fargo is going to get adequate protection to the extent of the amount that is -- capped at the amount that is in the accounts as of the petition date. But the parties will reserve rights as to the ranking of that adequate protection. And further, Wells Fargo would like to, and Ally and the third lien lenders would like to reserve rights on the subordination language that is quoted in the objection, for the final hearing, provided that any new-money loans that are issued before the final hearing shall be first in priority.

THE COURT: Is that acceptable?

MR. DONNELL: That's acceptable, Your Honor.

THE COURT: Fine. I'm so ordering the record for this evening. I think it would be of some use to take that nicely-stated agreement and to incorporate that into the form of order to be entered as well. Can you do that?

MR. DONNELL: Yes, Your Honor.

THE COURT: Great. And I'll see those who wish to be back here, at 11 o'clock tomorrow. We're adjourned till then.

IN UNISON: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 6:55 PM)

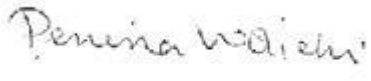
I N D E X

E X H I B I T S

RULINGS

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.



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Date: May 16, 2012